

DAVID K. TUTHILL, JR., in his capacity as
Director of the Idaho Department of Water
Resources, and THE IDAHO DEPARTMENT
OF WATER RESOURCES,

Respondents.

IN THE MATTER OF DISTRIBUTION OF
WATER TO VARIOUS WATER RIGHTS
HELD BY OR FOR THE BENEFIT OF A&B
IRRIGATION DISTRICT, AMERICAN
FALLS RESERVOIR DISTRICT #2,
BURLEY IRRIGATION DISTRICT,
MILNER IRRIGATION DISTRICT,
MINIDOKA IRRIGATION DISTRICT,
NORTH SIDE CANAL COMPANY, AND
TWIN FALLS CANAL COMPANY

COMES NOW, Petitioners, A&B Irrigation District ("A&B"), American Falls Reservoir District #2 ("AFRD#2"), Burley Irrigation District ("BID"), Milner Irrigation District ("Milner"), Minidoka Irrigation District ("MID"), North Side Canal Company ("NSCC"), and Twin Falls Canal Company ("TFCC") (collectively hereafter referred to as the "Surface Water Coalition", "Coalition", or "SWC"), by and through their undersigned counsel, and hereby files this *Statement of Initial Issues* for their *Petition for Judicial Review* previously filed with the Court on September 11, 2008.

STATEMENT OF INITIAL ISSUES

1. The Petitioners intend to assert the following issues on judicial review:
 - a. Whether the Director erred by failing to provide for timely and lawful administration of junior priority ground water rights to satisfy the Coalition's senior surface water rights.

- b. Whether the Director unconstitutionally applied the Department's conjunctive management rules (37.03.11 *et seq.*) in an attempt to administer junior priority ground water rights to satisfy the Coalition's senior surface water rights.
- c. Whether the Director erred in failing to recognize the Coalition's decreed senior surface water rights for purposes of conjunctive administration.
- d. Whether the Director erred in using a "replacement water plan" process not provided for by statute or the Department's conjunctive management rules in administration of junior priority ground water rights.
- e. Whether the Director erred in approving "replacement water plans" through various orders issued in 2005 and 2007 and failing to order any water to be provided to Coalition members during those irrigation seasons.
- f. Whether the Director erred in failing to properly provide for "reasonable carryover" water for the Coalition's use in subsequent irrigation seasons.
- g. Whether the Director erred in finding that "reasonable carryover" storage is not required to be provided until some undetermined date during the following irrigation season, hence no storage water is ever provided to "carryover" from one year to the next.
- h. Whether the Director erred in limiting Twin Falls Canal Company's headgate deliveries to its shareholders to 5/8 miner's inch per acre when TFCC's decreed water rights provide for 3/4 miner's inch deliveries.
- i. Whether the Director erred in using a 10% "trim line" to exclude certain junior priority ground water rights from administration.
- j. Whether the Director erred in relying upon evidence not in the record of the contested case.

k. Whether the Director erred in not issuing a final order in compliance with Idaho Code §§ 67-5244 and 67-5246.

2. Pursuant to I.R.C.P. 84(d)(5), the Coalition reserves the right to assert additional issues and/or clarify or further specify the issues for judicial review stated herein which become later discovered.

DATED this 25th day of September, 2008.

CAPITOL LAW GROUP, PLLC

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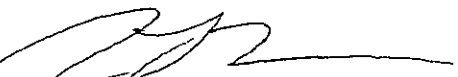

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of September, 2008, I served true and correct copies of the *Notice of Appeal and Petition for Judicial Review of Agency Action* upon the following by the method indicated:

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